



Broadcasting Decision CRTC 2009-558

Route reference: 2009-180

Ottawa, 3 September 2009

Bel-Roc Communications Inc.
Haldimand County, Ontario

Application 2009-0381-6, received 18 February 2009

CKJN-FM Haldimand County – Licence amendment

*The Commission **denies** an application to amend the broadcasting licence for CKJN-FM Haldimand County in order to reduce the minimum percentage of musical selections from category 2 (Popular music) that must be devoted to Canadian selections throughout the broadcast week and between 6:00 a.m. and 6:00 p.m. Monday to Friday from 60% to 35%.*

Introduction

1. The Commission received an application by Bel-Roc Communications Inc. (Bel-Roc) to amend the broadcasting licence for the commercial radio programming undertaking CKJN-FM Haldimand County, Ontario in order to reduce the minimum percentage of musical selection from category 2 (Popular music) that must be devoted to Canadian selections broadcast in their entirety throughout the broadcast week and between 6:00 a.m. and 6:00 p.m. Monday to Friday from 60% to 35%. The level proposed by the applicant is the minimum requirements set out in the *Radio Regulations, 1986* (the Regulations), as amended from time to time.

Background

2. Following a competitive licensing process, in Broadcasting Decision 2005-169 the Commission approved Bel-Roc's original application to establish an FM station in Haldimand County but denied the proposed frequency and directed the applicant to file an application for another acceptable frequency. Among the relevant factors that the Commission took into account in its evaluation of that application was Bel-Roc's commitment to ensure that at least 60% of all category 2 musical selections broadcast would be Canadian, both throughout the broadcast week and between 6:00 a.m. and 6:00 p.m. on weekdays. The Commission imposed Bel-Roc's commitment as a condition of licence.
3. In Broadcasting Decision 2005-596, the Commission approved Bel-Roc's application for the use of the 92.9 MHz frequency for its FM radio station in Haldimand County. In the same decision, the Commission denied the technically mutually exclusive application by CHCD Inc. to add a transmitter of its station CHCD-FM Simcoe in Haldimand County at 93.1 MHz.

4. CKJN-FM began operation on 4 August 2007.

Applicant's rationale for the present application

5. The Haliburton Broadcasting Group Inc. (Haliburton),¹ on behalf of Bel-Roc, stated that it was not party to the initial licensing application. In Haliburton's view, the commitment to broadcast a minimum of 60% Canadian content for category 2 music is not a viable even though the proposal may have helped the original owners of Bel-Roc to obtain a broadcasting licence. Haliburton submitted that CKJN-FM has failed to attract sufficient listeners or generate adequate advertising revenues. According to Haliburton's financial projections, the station's total revenues and net profit would increase with the proposed reduction in Canadian content.

Intervention

6. The Commission received an intervention in opposition to the application. The intervener noted that the Commission awarded a broadcasting licence to Bel-Roc based on the merits of its initial licensing application including its significant commitment to broadcast a high level of Canadian content for category 2 music. Further, in the intervener's view, the applicant's own financial estimates indicate that the station would not be profitable even if the proposed licence amendment were approved.
7. The licensee did not reply to the intervention.

Commission's analysis and determinations

8. As noted above, CKJN-FM's Canadian content condition of licence is based on a commitment made by Bel-Roc in a competitive licensing process. Subsequently, the Commission approved Bel-Roc's application for the use of a frequency in a technically mutually exclusive situation. The Commission is not persuaded by Haliburton's arguments that it was not involved in the initial licensing application and that the original commitment to broadcast a high level of Canadian category 2 musical selections is not viable. In this regard, the Commission reminds Haliburton that when it purchased CKJN-FM, it agreed to abide by all of the station's terms and conditions of licence including the condition that it must broadcast a minimum of 60% Canadian content for category 2 music. The Commission further finds that the applicant did not demonstrate evidence of a connection between offering a high level of Canadian content and a station's poor financial performance. In the Commission's view, allowing Bel-Roc to reduce its significant Canadian content commitment during the station's first licence term and after only two years of operation would bring into question the integrity of the licensing process.

¹ As announced in Broadcasting Public Notice 2007-60, the Commission approved, pursuant to its streamlined procedures, the transfer of ownership and effective control of Bel-Roc to The Haliburton Broadcasting Group Inc. in April 2007.

9. In addition, the Commission's analysis of the present application revealed that, during the current licence term, CKJN-FM may have failed to comply with section 9 of the Regulations. Under that section of the Regulations, licensees must submit to the Commission, on or before November 30 of each year, a statement of accounts on the annual return of the broadcasting licensee form for the year ending on the previous August 31. The Commission did not receive the licensee's 2007 annual return until 6 March 2008. When asked by Commission staff to comment on the delay in the filing of CKJN-FM's annual return, the applicant stated that the minority ownership group that operated the station prior to the transfer of ownership did not keep detailed or accurate accounting records.
10. The Commission's analysis also revealed apparent non-compliance with CKJN-FM's condition of licence that stipulates its required expenditures on Canadian talent development (CTD). Under that condition of licence, the licensee must allocate \$290,000 in direct expenditures on CTD initiatives over a seven-year licence term as follows: \$30,000 in each of the first three years of operation, \$40,000 in the fourth year, \$50,000 in each of the fifth and sixth years, and \$60,000 in the seventh year. Of those totals, \$5,000 in each of the first three years and \$10,000 in each of the remaining years of the licence term must be directed to FACTOR, while the remaining expenditures in each year must be directed to not-for-profit events involving the showcasing of Canadian talent at concerts and festivals.
11. The Commission notes, however, that CKJN-FM's annual CTD reports indicate that the station contributed only \$5,000 to FACTOR in 2008. When questioned by Commission staff on this issue, the applicant attributed the shortfall to accounting problems it experienced with the previous minority owners of Bel-Roc. The applicant affirmed that it would be in compliance by 31 August 2009. As requested by the applicant, the Commission will permit the applicant to redirect its annual CTD contributions, including those that were to be allocated by 31 August 2009, to FACTOR only.
12. The Commission's longstanding practice is to deny licence amendments requested by licensees that are in non-compliance with their regulatory obligations. The Commission does not consider that a departure from this practice is warranted in this case.
13. In light of the above, the Commission **denies** the application by Bel-Roc Communications Inc. to amend the broadcasting licence for the commercial radio programming undertaking CKJN-FM Haldimand County in order to reduce the minimum percentage of musical selections from category 2 (Popular music) that must be devoted to Canadian selections throughout the broadcast week and between 6:00 a.m. and 6:00 p.m. Monday to Friday from 60% to 35%.

Secretary General

Related documents

- *Applications granted approval pursuant to streamlined procedures*, Broadcasting Public Notice CRTC 2007-60, 7 June 2007
- *Use of frequency 92.9 MHz by the new English-language FM radio station in Haldimand County and addition of a transmitter of CHCD-FM Simcoe in Haldimand County*, Broadcasting Decision CRTC 2005-596, 21 December 2005
- *English-language FM radio station in Haldimand County*, Broadcasting Decision CRTC 2005-169, 20 April 2005

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